



House of Representatives

File No. 862

General Assembly

January Session, 2013

(Reprint of File No. 286)

Substitute House Bill No. 6355
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 24, 2013

AN ACT CONCERNING HOMEOWNER PROTECTION RIGHTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 49-31k of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 15, 2013*):

3 As used in this section and sections 49-31l to 49-31o, inclusive, as
4 amended by this act, and section 5 of this act:

5 (1) "Mortgagor" means: (A) The owner-occupant of one-to-four
6 family residential real property located in this state who is also the
7 borrower under a mortgage encumbering such residential real
8 property, except an heir or occupying nonowner of a property
9 encumbered by a reverse annuity mortgage, which is the primary
10 residence of such owner-occupant, or (B) a religious organization that
11 is (i) the owner of real property located in this state, and (ii) the
12 borrower under a mortgage encumbering such real property;

13 (2) "Residential real property" means a one-to-four family dwelling,
14 occupied as a residence by a mortgagor;

15 (3) "Mortgagee" means the [original lender or servicer under a
16 mortgage, or its successors or assigns, who is the holder of any
17 mortgage] owner or servicer of the debt secured by a mortgage on
18 residential real property or real property owned by a religious
19 organization securing a loan made primarily for personal, family,
20 religious or household purposes that is the subject of a foreclosure
21 action;

22 (4) "Authority" means the Connecticut Housing Finance Authority
23 created under section 8-244;

24 (5) "Mortgage assistance programs" means the mortgage assistance
25 programs developed and implemented by the authority in accordance
26 with sections 8-265cc to 8-265kk, inclusive, 8-265rr and 8-265ss; [and]

27 (6) "Religious organization" means an organization that meets the
28 religious purposes test of Section 501(c)(3) of the Internal Revenue
29 Code of 1986; [.]

30 (7) "Objectives of the mediation program" (A) means a
31 determination as to whether or not the parties can reach an agreement
32 that will (i) avoid foreclosure by means that may include consideration
33 of any loss mitigation options available through the mortgagee, or (ii)
34 expedite or facilitate the foreclosure in a manner acceptable to the
35 parties, and (B) includes an expectation that all parties shall endeavor
36 to reach such determination with reasonable speed and efficiency by
37 participating in the mediation process in good faith, but without
38 unreasonable and unnecessary delays; and

39 (8) "Ability to mediate" means an exhibition on the part of the
40 relevant person of a willingness, including a reasonable ability, to
41 participate in the mediation process in a manner consistent with the
42 objectives of the mediation program and in conformity with any
43 obligations imposed in accordance with subdivision (2) of subsection
44 (b) or (c), as applicable, of section 49-31n, as amended by this act,
45 including, but not limited to, a willingness and reasonable ability to
46 respond to questions and specify or estimate when particular decisions

47 will be made or particular information will be furnished and, with
48 respect to the mortgagee, a reasonable familiarity with the loan file,
49 any loss mitigation options that are available to the mortgagor and the
50 material issues raised in prior mediation sessions. Reasonable
51 familiarity with such material issues may be achieved by becoming
52 reasonably familiar with the mediator reports submitted in accordance
53 with subdivision (4) of subsections (b) and (c) of section 49-31n, as
54 amended by this act, to the extent such reports are available.

55 Sec. 2. Section 49-31l of the general statutes is repealed and the
56 following is substituted in lieu thereof (*Effective July 15, 2013*):

57 (a) Prior to July 1, 2014: (1) Any action for the foreclosure of a
58 mortgage on residential real property with a return date during the
59 period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to
60 the provisions of subsection (b) of this section, and (2) any action for
61 the foreclosure of a mortgage on (A) residential real property with a
62 return date during the period from July 1, 2009, to June 30, 2014,
63 inclusive, or (B) real property owned by a religious organization with a
64 return date during the period from October 1, 2011, to June 30, 2014,
65 inclusive, shall be subject to the provisions of subsection (c) of this
66 section.

67 (b) (1) Prior to July 1, [2012] 2014, when a mortgagee commences an
68 action for the foreclosure of a mortgage on residential real property
69 with a return date during the period from July 1, 2008, to June 30, 2009,
70 inclusive, the mortgagee shall give notice to the mortgagor of the
71 foreclosure mediation program established in section 49-31m by
72 attaching to the front of the foreclosure complaint that is served on the
73 mortgagor: (A) A copy of the notice of the availability of foreclosure
74 mediation, in such form as the Chief Court Administrator prescribes,
75 and (B) a foreclosure mediation request form, in such form as the Chief
76 Court Administrator prescribes.

77 (2) Except as provided in subdivision (3) of this subsection, a
78 mortgagor may request foreclosure mediation by submitting the

79 foreclosure mediation request form to the court and filing an
80 appearance not more than fifteen days after the return date for the
81 foreclosure action. Upon receipt of the foreclosure mediation request
82 form, the court shall notify each appearing party that a foreclosure
83 mediation request form has been submitted by the mortgagor.

84 (3) The court may grant a mortgagor permission to submit a
85 foreclosure mediation request form and file an appearance after the
86 fifteen-day period established in subdivision (2) of this subsection, for
87 good cause shown. [except that no foreclosure mediation request
88 form may be submitted and no appearance may be filed more than
89 twenty-five days after the return date.]

90 (4) No foreclosure mediation request form may be submitted to the
91 court under this subsection on or after July 1, [2012] 2014.

92 (5) If at any time on or after July 1, 2008, but prior to July 1, [2012]
93 2014, the court determines that the notice requirement of subdivision
94 (1) of this subsection has not been met, the court may, upon its own
95 motion or upon the written motion of the mortgagor, issue an order
96 that no judgment may enter for fifteen days during which period the
97 mortgagor may submit a foreclosure mediation request form to the
98 court.

99 (6) Notwithstanding any provision of the general statutes or any
100 rule of law to the contrary, prior to July 1, [2012] 2014, no judgment of
101 strict foreclosure nor any judgment ordering a foreclosure sale shall be
102 entered in any action subject to the provisions of this subsection and
103 instituted by the mortgagee to foreclose a mortgage on residential real
104 property unless: (A) Notice to the mortgagor has been given by the
105 mortgagee in accordance with subdivision (1) of this subsection and
106 the time for submitting a foreclosure mediation request form has
107 expired and no foreclosure mediation request form has been
108 submitted, or if such notice has not been given, the time for submitting
109 a foreclosure mediation request form pursuant to subdivision (2) or (3)
110 of this subsection has expired and no foreclosure mediation request

111 form has been submitted, or (B) the mediation period set forth in
112 subdivision (b) of section 49-31n has expired or has otherwise
113 terminated, whichever is earlier.

114 (7) None of the mortgagor's or mortgagee's rights in the foreclosure
115 action shall be waived by the mortgagor's submission of a foreclosure
116 mediation request form to the court.

117 (c) (1) Prior to July 1, 2014, when a mortgagee commences an action
118 for the foreclosure of a mortgage on residential real property with a
119 return date on or after July 1, 2009, or, with respect to real property
120 owned by a religious organization, a return date on or after October 1,
121 2011, the mortgagee shall give notice to the mortgagor of the
122 foreclosure mediation program established in section 49-31m, as
123 amended by this act, by attaching to the front of the writ, summons
124 and complaint that is served on the mortgagor: (A) A copy of the
125 notice of foreclosure mediation, in such form as the Chief Court
126 Administrator prescribes, (B) a copy of the foreclosure mediation
127 certificate form described in subdivision (3) of this subsection, in such
128 form as the Chief Court Administrator prescribes, (C) a blank
129 appearance form, in such form as the Chief Court Administrator
130 prescribes, [and] (D) with respect to an action for the foreclosure of a
131 mortgage on residential real property with a return date on or after
132 October 1, 2011, to September 30, 2013, inclusive, a mediation
133 information form and a notice containing contact information for
134 authority-approved consumer credit counseling agencies, which form
135 and notice shall be in such form as the Chief Court Administrator
136 prescribes, [. Such mediation information form shall be] and which
137 form shall be designed to elicit current financial information and such
138 other nonfinancial information from the mortgagor as the Chief Court
139 Administrator, in consultation with representatives from the banking
140 industry and consumer advocates, determines will [be useful to]
141 further the objectives of the mediation [process] program. The
142 instructions to the mediation information form shall explain that the
143 completed mediation information form, along with accompanying
144 documentation reasonably requested from the mortgagor by way of

145 such instructions, shall be delivered to the mortgagee's counsel not
146 later than fifteen business days prior to the date of the initial mediation
147 session, as identified in the notice provided pursuant to subdivision (2)
148 of subsection (c) of section 49-31n, as amended by this act, and (E) for
149 an action to foreclose a mortgage on residential real property with a
150 return date on or after October 1, 2013, the mediation information form
151 shall instruct the mortgagor as to the objectives of the mediation
152 program, explain the preliminary process of meeting with the
153 mediator as described in subdivision (4) of this subsection, instruct the
154 mortgagor to begin gathering financial documentation commonly used
155 in foreclosure mediation for use in meeting with the mediator and in
156 mediation, and include a notice containing contact information for
157 authority-approved consumer counseling agencies, which shall be in
158 such form as the Chief Court Administrator prescribes. The content of
159 the mediation information form shall be designed by the Chief Court
160 Administrator in consultation with representatives from the banking
161 industry and consumer advocates.

162 (2) The court shall issue a notice of foreclosure mediation described
163 in subdivision (3) of this subsection to the mortgagor not later than the
164 date three business days after the date the mortgagee returns the writ
165 to the court.

166 (3) The notice of foreclosure mediation shall instruct the mortgagor
167 to file the appearance and foreclosure mediation certificate forms with
168 the court not later than the date fifteen days from the return date for
169 the foreclosure action. [Such] With respect to actions with a return date
170 on or after October 1, 2011, to September 30, 2013, inclusive, such
171 notice shall remind the mortgagor to deliver the completed mediation
172 information form and the accompanying documentation described in
173 subdivision (1) of this subsection and encourage such delivery in
174 advance of the required date. With respect to actions with a return date
175 on or after October 1, 2013, to June 30, 2014, inclusive, such notice shall
176 instruct the mortgagor to begin gathering financial information
177 commonly used in foreclosure mediation for use in meeting with the
178 mediator and in mediation. The mediation information form and

179 accompanying documentation shall not, without the explicit written
180 instruction of the mortgagor, be publicly available. Such notice of
181 foreclosure mediation shall be accompanied by materials from the
182 Department of Banking, as prescribed by the Chief Court
183 Administrator, which shall describe the community-based resources
184 available to the mortgagor, including authority-approved housing
185 counseling agencies that may assist with preparation [of the mediation
186 information form] for mediation and application for mortgage
187 assistance programs. The foreclosure mediation certificate form shall
188 require the mortgagor to provide sufficient information to permit the
189 court to confirm that the defendant in the foreclosure action is a
190 mortgagor, and to certify that said mortgagor has sent a copy of the
191 mediation certificate form to the plaintiff in the action.

192 (4) Upon receipt of the mortgagor's appearance and foreclosure
193 mediation certificate forms, and provided the court confirms the
194 defendant in the foreclosure action is a mortgagor and that said
195 mortgagor has sent a copy of the mediation certificate form to the
196 plaintiff, the court shall [schedule a date for foreclosure mediation in
197 accordance with subsection (c) of section 49-31n. The court shall issue
198 notice of such mediation date to all appearing parties] assign the case
199 to mediation and issue notice of such assignment to all appearing
200 parties, which notice shall include an electronic mail address for all
201 communications related to the mediation. The court shall issue such
202 notice not earlier than the date five business days after the return date
203 or by the date three business days after the date on which the court
204 receives the mortgagor's appearance and foreclosure mediation
205 certificate forms, whichever is later, except that if the court does not
206 receive the appearance and foreclosure mediation certificate forms
207 from the mortgagor by the date fifteen days after the return date for
208 the foreclosure action, the court shall not [schedule such mediation.]
209 assign the case to mediation. Promptly upon receipt of the notice of
210 assignment, but not later than the thirty-fifth day following the return
211 date, the mortgagee or its counsel shall deliver to the mediator, via the
212 electronic mail address provided for communications related to the

213 mediation, and to the mortgagor, via first class, priority or overnight
214 mail, (A) an account history identifying all credits and debits assessed
215 to the loan account and any related escrow account in the immediately
216 preceding twelve-month period and an itemized statement of the
217 amount required to reinstate the mortgage loan with accompanying
218 information, written in plain language, to explain any codes used in
219 the history and statement which are not otherwise self-explanatory, (B)
220 the name, business mailing address, electronic mail address, facsimile
221 number and direct telephone number of an individual able to respond
222 with reasonable adequacy and promptness to questions relative to the
223 information submitted to the mediator pursuant to this subdivision,
224 and any subsequent updates to such contact information, which shall
225 be provided reasonably promptly to the mediator via the electronic
226 mail address provided for communication related to the mediation, (C)
227 all reasonably necessary forms and a list of all documentation
228 reasonably necessary for the mortgagee to evaluate the mortgagor for
229 common alternatives to foreclosure that are available through the
230 mortgagee, if any, (D) a copy of the note and mortgage, (E) summary
231 information regarding the status of any pending foreclosure avoidance
232 efforts being undertaken by the mortgagee, (F) a copy of any loss
233 mitigation affidavit filed with the court, and (G) at the mortgagee's
234 option, (i) the history of foreclosure avoidance efforts with respect to
235 the mortgagor, (ii) information regarding the condition of mortgaged
236 property, and (iii) such other information as the mortgagee may
237 determine is relevant to meeting the objectives of the mediation
238 program. Following the mediator's receipt of such information, the
239 court shall assign a mediator to the mediation and schedule a meeting
240 with the mediator and the mortgagor and shall endeavor to schedule
241 such meeting on or prior to the forty-ninth day following the return
242 date. The notice of such meeting shall instruct the mortgagor to
243 complete the forms prior to the meeting and to furnish such forms
244 together with the documentation contained in the list, as provided by
245 the mortgagee following the filing of the foreclosure mediation
246 certificate, at the meeting. At such meeting, the mediator shall review
247 such forms and documentation with the mortgagor, along with the

248 information supplied by the mortgagee, in order to discuss the options
249 that may be available to the mortgagor, including any community-
250 based resources, and assist the mortgagor in completing the forms and
251 furnishing the documentation necessary for the mortgagee to evaluate
252 the mortgagor for alternatives to foreclosure. The mediator may elect
253 to schedule subsequent meetings with the mortgagor and determine
254 whether any mortgagor may be excused from an in-person appearance
255 at such subsequent meeting. As soon as practicable, but in no case later
256 than the eighty-fourth day following the return date, the mediator
257 shall facilitate and confirm the submission by the mortgagor of the
258 forms and documentation to the mortgagee's counsel via electronic
259 means and, at the mortgagee's election, directly to the mortgagee per
260 the mortgagee's instruction, and determine, based on the mortgagor's
261 attendance at the meetings and the extent the mortgagor completed the
262 forms and furnished the documentation contemplated in this
263 subdivision, or failed to perform such tasks through no material fault
264 of the mortgagee, and file a report with the court indicating, (I)
265 whether mediation shall be scheduled with the mortgagee, (II) whether
266 the mortgagor attended scheduled meetings with the mediator, (III)
267 whether the mortgagor fully or substantially completed the forms and
268 furnished the documentation requested by the mortgagee, (IV) the
269 date on which the mortgagee supplied the forms and documentation,
270 and (V) any other information the mediator determines to be relevant
271 to the objectives of the mediation program. No meeting or
272 communication between the mediator and mortgagor under this
273 subdivision shall be treated as an impermissible ex parte
274 communication. If the mediator determines that the mortgagee shall
275 participate in mediation, the court shall promptly issue notice to all
276 parties of such determination and schedule a mediation session
277 between the mortgagee and mortgagor in accordance with subsection
278 (c) of section 49-31n, as amended by this act, to be held not later than
279 five weeks following the submission to the mortgagee of the forms and
280 documentation contemplated in this subdivision. If the mediator
281 determines that no sessions between the mortgagee and mortgagor
282 shall be scheduled, the court shall promptly issue notice to all parties

283 regarding such determination and mediation shall be terminated. Any
284 mortgagor wishing to contest such determination shall petition the
285 court and show good cause for reinclusion in the mediation program,
286 including, but not limited to, a material change in financial
287 circumstances or a mistake or misunderstanding of the facts by the
288 mediator.

289 (5) Notwithstanding the provisions of this subsection, the court may
290 refer a foreclosure action brought by a mortgagee to the foreclosure
291 mediation program at any time, for good cause shown, provided the
292 mortgagor has filed an appearance in said action and further provided
293 the court shall, not later than the date three business days after the date
294 on which it makes such referral, send a notice to each appearing party
295 [scheduling the first foreclosure mediation session for a date not later
296 than the date thirty-five days from the date of such referral] assigning
297 the case to mediation and requiring the parties to participate in the
298 premediation process described in subdivision (4) of this subsection,
299 with the court establishing deadlines to ensure that the premediation
300 process is to be completed by the parties as expeditiously as the
301 circumstances warrant and permit. When determining whether good
302 cause exists, the court shall consider whether the parties are likely to
303 benefit from mediation and, in the case of a referral after prior
304 attempts at mediation have been terminated, whether there has been a
305 material change in circumstances.

306 (6) Notwithstanding any provision of the general statutes or any
307 rule of law, prior to July 1, 2014, (A) for the period of time which shall
308 not exceed eight months from the return date, the mortgagor shall be
309 permitted to file an answer, special defenses or counterclaims, but no
310 mortgagee or mortgagor shall make any motion, request or demand
311 with respect to the other, except those motions, requests or demands
312 that relate to the mediation program described in section 49-31m, as
313 amended by this act, and the mediation sessions held pursuant to such
314 program, provided (i) a mortgagor seeking to contest the court's
315 jurisdiction may file a motion to dismiss and the mortgagee may object
316 to such motion to dismiss in accordance with applicable law and the

317 rules of the courts, and (ii) if the mortgagor elects to make any other
318 motion, request or demand with respect to the mortgagee, the eight-
319 month limit shall no longer apply to either party; and (B) no judgment
320 of strict foreclosure nor any judgment ordering a foreclosure sale shall
321 be entered in any action subject to the provisions of this subsection and
322 instituted by the mortgagee to foreclose a mortgage on residential real
323 property or real property owned by a religious organization unless: (i)
324 The mediation period set forth in subsection (c) of section 49-31n, as
325 amended by this act, has expired or has otherwise terminated,
326 whichever is earlier, and, if fewer than eight months has elapsed from
327 the return date at the time of termination, fifteen days have elapsed
328 since such termination and any pending motion or request to extend
329 the mediation period has been heard and denied by the court, or (ii)
330 the mediation program is not otherwise required or available. Nothing
331 in this subdivision shall affect any motion made or any default or
332 judgment entered on or before June 30, 2011.

333 (7) With respect to foreclosure actions with a return date on or after
334 July 1, 2011, to June 30, 2014, inclusive, notwithstanding any provision
335 of the general statutes or any rule of law to the contrary, the mortgagee
336 shall be permitted [, on or before July 1, 2014, and] following the eight-
337 month or fifteen-day period described in subdivision (6) of this
338 subsection, to simultaneously file, as applicable, (A) a motion for
339 default, and (B) a motion for judgment of strict foreclosure or a motion
340 for judgment of foreclosure by sale with respect to the mortgagor in
341 the foreclosure action.

342 (8) None of the mortgagor's or mortgagee's rights in the foreclosure
343 action shall be waived by participation in the foreclosure mediation
344 program.

345 Sec. 3. Section 49-31m of the general statutes is repealed and the
346 following is substituted in lieu thereof (*Effective July 15, 2013*):

347 The Chief Court Administrator shall establish in each judicial
348 district a foreclosure mediation program in actions to foreclose

349 mortgages on residential real property or real property owned by a
350 religious organization. Such foreclosure mediation shall (1) address all
351 issues of foreclosure, including, but not limited to, reinstatement of the
352 mortgage, disposition of the property through means other than the
353 foreclosure process, including short sales and deeds in lieu of
354 foreclosure, assignment of law days, assignment of sale date,
355 restructuring of the mortgage debt and foreclosure by decree of sale,
356 and (2) be conducted by foreclosure mediators who (A) have a duty to
357 be unbiased and are employed by the Judicial Branch, (B) are trained
358 in mediation and all relevant aspects of the law, as determined by the
359 Chief Court Administrator, (C) have knowledge of the community-
360 based resources that are available in the judicial district in which they
361 serve, and (D) have knowledge of the mortgage assistance programs.
362 Such mediators may refer mortgagors who participate in the
363 foreclosure mediation program to community-based resources when
364 appropriate and to the mortgage assistance programs. Such mediators
365 shall not give legal advice to any party in mediation.

366 Sec. 4. Section 49-31n of the general statutes is repealed and the
367 following is substituted in lieu thereof (*Effective July 15, 2013*):

368 (a) Prior to July 1, 2014: (1) Any action for the foreclosure of a
369 mortgage on residential real property with a return date during the
370 period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to
371 the provisions of subsection (b) of this section, and (2) any action for
372 the foreclosure of a mortgage on (A) residential real property with a
373 return date during the period from July 1, 2009, to June 30, 2014,
374 inclusive, or (B) real property owned by a religious organization with a
375 return date during the period from October 1, 2011, to June 30, 2014,
376 inclusive, shall be subject to the provisions of subsection (c) of this
377 section.

378 (b) (1) For any action for the foreclosure of a mortgage on residential
379 real property with a return date during the period from July 1, 2008, to
380 June 30, 2009, inclusive, the mediation period under the foreclosure
381 mediation program established in section 49-31m, as amended by this

382 act, shall commence when the court sends notice to each appearing
383 party that a foreclosure mediation request form has been submitted by
384 a mortgagor to the court, which notice shall be sent not later than three
385 business days after the court receives a completed foreclosure
386 mediation request form. The mediation period shall conclude not
387 [more than sixty days after the return date for the foreclosure action]
388 later than the conclusion of the third mediation session between the
389 mortgagor and mortgagee or seven months after the return date,
390 whichever is earlier, except that the court may, in its discretion, for
391 good cause shown, upon the motion of any party or the mediator, (A)
392 extend [, by not more than thirty days, or shorten the mediation period
393 on its own motion or upon motion of any party, or (B) extend by not
394 more than thirty days the mediation period upon written request of
395 the mediator] the mediation period subject to the provisions of
396 subdivision (9) of this subsection or shorten the mediation period.

397 (2) The first mediation session shall be held not later than fifteen
398 business days after the court sends notice to all parties that a
399 foreclosure mediation request form has been submitted to the court.
400 The mortgagor and mortgagee shall appear in person at each
401 mediation session and shall have [authority to agree to a proposed
402 settlement] the ability to mediate, except that (A) if [the mortgagee] a
403 party is represented by counsel, the [mortgagee's] party's counsel may
404 appear in lieu of the [mortgagee] party to represent the [mortgagee's]
405 party's interests at the mediation, provided [such counsel has the
406 authority to agree to a proposed settlement] the party has the ability to
407 mediate, the mortgagor attends the first mediation session in person,
408 and the [mortgagee] party is available (i) during the mediation session
409 by telephone, and (ii) to participate in the mediation session by
410 speakerphone, provided an opportunity is afforded for confidential
411 discussions between the [mortgagee and mortgagee's] party and
412 party's counsel, [and] (B) following the initial mediation session, if
413 there are two or more mortgagors who are self-represented, only one
414 mortgagor shall be required to appear in person at each subsequent
415 mediation session unless good cause is shown, provided the other

416 mortgagors are available (i) during the mediation session, and (ii) to
417 participate in the mediation session by speakerphone, [provided an
418 opportunity is afforded for confidential discussions among the
419 mortgagors and such mortgagors' counsel. The court shall not award
420 attorney's fees to any mortgagee for time spent in any mediation
421 session if the court finds that such mortgagee has failed to comply with
422 this subdivision, unless the court finds reasonable cause for such
423 failure.] and (C) if a party suffers from a disability or other significant
424 hardship that imposes an undue burden on such party to appear in
425 person, the mediator may grant permission to such party to participate
426 in the mediation session by telephone. A mortgagor's spouse, who is
427 not a mortgagor but who lives in the subject property, may appear at
428 each mediation session, provided all appearing mortgagors consent, in
429 writing, to such spouse's appearance or such spouse shows good cause
430 for his or her appearance and the mortgagors consent in writing to the
431 disclosure of nonpublic personal information to such spouse. If the
432 mortgagor has submitted a complete package of financial
433 documentation in connection with a request for a particular
434 foreclosure alternative, the mortgagee shall have thirty-five days from
435 the receipt of the completed package to respond with a decision and, if
436 the decision is a denial of the request, provide the reasons for such
437 denial. If the mortgagor has, in connection with a request for a
438 foreclosure alternative, submitted a financial package that is not
439 complete, or if the mortgagee's evaluation of a complete package
440 reveals that additional information is necessary to underwrite the
441 request, the mortgagee shall request the missing or additional
442 information within a reasonable period of time of such evaluation. If
443 the mortgagee's evaluation of a complete package reveals that
444 additional information is necessary to underwrite the request, the
445 thirty-five-day deadline for a response shall be extended but only for
446 so long as is reasonable given the timing of the mortgagor's submission
447 of such additional information and the nature and context of the
448 required underwriting. Not later than the third business day after each
449 mediation session held on or after the effective date of this act, the
450 mediator shall file with the court a report indicating, to the extent

451 applicable, (i) the extent to which each of the parties complied with the
452 requirements set forth in this subdivision, including the requirement to
453 engage in conduct that is consistent with the objectives of the
454 mediation program and to possess the ability to mediate, (ii) whether
455 the mortgagor submitted a complete package of financial
456 documentation to the mortgagee, (iii) a general description of the
457 foreclosure alternative being requested by the mortgagor, (iv) whether
458 the mortgagor has previously been evaluated for similar requests,
459 whether prior to mediation or in mediation, and, if so, whether there
460 has been any apparent change in circumstances since a decision was
461 made with respect to that prior evaluation, (v) whether the mortgagee
462 has responded to the mortgagor's request for a foreclosure alternative
463 and, if so, a description of the response and whether the mediator is
464 aware of any material reason not to agree with the response, (vi)
465 whether the mortgagor has responded to an offer made by the
466 mortgagee on a reasonably timely basis, and if so, an explanation of
467 the response, (vii) whether the mortgagee has requested additional
468 information from the mortgagor and, if so, the stated reasons for the
469 request and the date by which such additional information shall be
470 submitted so that information previously submitted by the mortgagor,
471 to the extent possible, may still be used by the mortgagee in
472 conducting its review, (viii) whether the mortgagor has supplied, on a
473 reasonably timely basis, any additional information that was
474 reasonably requested by the mortgagee, and, if not, the stated reason
475 for not doing so, (ix) if information provided by the mortgagor is no
476 longer current for purposes of evaluating a foreclosure alternative, a
477 description of the out-of-date information and an explanation as to
478 how and why such information is no longer current, (x) whether the
479 mortgagee has provided a reasonable explanation of the basis for a
480 decision to deny a request for a loss mitigation option or foreclosure
481 alternative and whether the mediator is aware of any material reason
482 not to agree with that decision, (xi) whether the mortgagee has
483 complied with the timeframes set forth in this subdivision for
484 responding to requests for decisions, (xii) if a subsequent mediation
485 session is expected to occur, a general description of the expectations

486 for such subsequent session and for the parties prior to such
487 subsequent session and, if not otherwise addressed in the report,
488 whether the parties satisfied the expectations set forth in previous
489 reports, and (xiii) a determination of whether the parties will benefit
490 from further mediation. The mediator shall deliver a copy of such
491 report to each party to the mediation when the mediator files the
492 report. The parties shall have the opportunity to submit their own
493 supplemental information following the filing of the report, provided
494 such supplemental information shall be submitted not later than five
495 business days following the receipt of the mediator's report. Any
496 request by the mortgagee to the mortgagor for additional or updated
497 financial documentation shall be made in writing. The court may
498 impose sanctions on any party or on counsel to a party if such party or
499 such counsel engages in intentional or a pattern or practice of conduct
500 during the mediation process that is contrary to the objectives of the
501 mediation program. Any sanction that is imposed shall be
502 proportional to the conduct and consistent with the objectives of the
503 mediation program. Available sanctions shall include, but not be
504 limited to, terminating mediation, ordering the mortgagor or
505 mortgagee to mediate in person, forbidding the mortgagee from
506 charging the mortgagor for the mortgagee's attorney's fees, awarding
507 attorney's fees, and imposing fines. In the case of egregious
508 misconduct, the sanctions shall be heightened. The court shall not
509 award attorney's fees to any mortgagee for time spent in any
510 mediation session if the court finds that such mortgagee has failed to
511 comply with this subdivision, unless the court finds reasonable cause
512 for such failure.

513 (3) [Not later than two days after the conclusion of the first
514 mediation session, the mediator shall determine whether the parties
515 will benefit from further mediation. The mediator shall file with the
516 court a report setting forth such determination and mail a copy of such
517 report to each appearing party.] If the mediator reports to the court
518 that the parties will not benefit from further mediation, the mediation
519 period shall terminate automatically. If the mediator reports to the

520 court after the first or second mediation session that the parties may
521 benefit from further mediation, the mediation period shall continue.

522 (4) [If the mediator has submitted a report to the court that the
523 parties may benefit from further mediation pursuant to subdivision (3)
524 of this subsection, not more than two days after the conclusion of the
525 mediation, but not later than the termination of the mediation period
526 set forth in subdivision (1) of this subsection, the mediator shall file a
527 report with the court describing the proceedings and specifying the
528 issues resolved, if any, and any issues not resolved pursuant to the
529 mediation. The filing of the report shall terminate the mediation period
530 automatically.] If the mediation period concludes and certain issues
531 have not been resolved pursuant to the mediation, the mediator may
532 refer the mortgagor to any appropriate community-based services that
533 are available, [in the judicial district, but any such referral shall not
534 cause a delay in the mediation process.]

535 (5) The Chief Court Administrator shall establish policies and
536 procedures to implement this subsection. Such policies and procedures
537 shall, at a minimum, provide that the mediator shall advise the
538 mortgagor at the first [mediation session] meeting required by
539 [subdivision (2) of this subsection] subdivision (4) of subsection (c) of
540 section 49-31l, as amended by this act, that [:(A) Such mediation does
541 not suspend the mortgagor's obligation to respond to the foreclosure
542 action; and (B)] a judgment of strict foreclosure or foreclosure by sale
543 may cause the mortgagor to lose the residential real property to
544 foreclosure.

545 (6) In no event shall any determination issued by a mediator under
546 this program form the basis of an appeal of any foreclosure judgment.

547 (7) Foreclosure mediation request forms shall not be accepted by the
548 court under this subsection on or after July 1, [2012] 2014, and the
549 foreclosure mediation program shall terminate when all mediation has
550 concluded with respect to any applications submitted to the court prior
551 to July 1, 2014.

552 (8) At any time during the mediation period, the mediator may refer
553 a mortgagor who is the owner-occupant of one-to-four family
554 residential real property to the mortgage assistance programs, except
555 that any such referral shall not prevent a mortgagee from proceeding
556 to judgment when the conditions specified in subdivision (6) of
557 subsection (b) of section 49-311, as amended by this act, have been
558 satisfied.

559 (9) (A) The mediation period shall conclude following the third
560 mediation session or if more than seven months have elapsed since the
561 return date. Not later than fifteen days following the conclusion of the
562 mediation period, and any extended mediation sessions held in
563 accordance with this subdivision, any party may move for, or the
564 mediator may request, an extension of the mediation period. The court
565 shall grant only one additional mediation session per motion or
566 request upon a finding that it is highly probable the parties will reach
567 an agreement through mediation. The court may also grant one
568 additional mediation session per motion or request upon a finding that
569 any party has engaged, either intentionally or by a pattern or practice,
570 in conduct that is contrary to the objectives of the mediation program.
571 The court shall make its ruling not later than twenty days after the
572 filing of such motion or request, and no judgment of strict foreclosure
573 or any judgment ordering a foreclosure sale shall be entered until (i)
574 the court denies the motion or request, or (ii) the conclusion of the
575 extended mediation session, except as provided in subparagraph (B) of
576 this subdivision. Upon the grant of an additional mediation session
577 following the proper finding, the court shall establish an expeditious
578 deadline for such extended mediation session to occur. Such extended
579 mediation period shall conclude following such extended mediation
580 session.

581 (B) The mediation period may be extended for one additional
582 mediation session without a hearing held pursuant to this subdivision
583 provided all parties to the mediation agree that such parties would
584 benefit from such a session and, in consultation with the mediator,
585 establish an expeditious deadline for such session to take place.

586 (C) To determine whether to extend mediation, the court may
587 consider all matters that have arisen in the mediation, including, but
588 not limited to, the number of motions to extend mediation, the reasons
589 for which an agreement has not been reached, the objectives of the
590 mediation program, the extent to which the parties will benefit from
591 further mediation, the reports submitted by the mediator, papers
592 submitted in connection with any motion, and any supplemental
593 reports submitted by a party. The court shall articulate its reasons in
594 the order granting or denying any such motion or request to extend
595 mediation.

596 (10) For any case pending as of October 1, 2013, in which mediation
597 is ongoing, (A) if three or fewer sessions have been held, such case
598 shall be treated as if no sessions have been held as of said date for
599 purposes of subdivision (9) of this subsection, and (B) if four or more
600 sessions have been held, then any party or the mediator may move to
601 terminate the mediation period or extend such period in accordance
602 with subdivision (9) of this subsection and, if no such motion to extend
603 is made, the mediation period shall conclude after the third mediation
604 session occurring after October 1, 2013.

605 (c) (1) For any action for the foreclosure of a mortgage on residential
606 real property with a return date during the period from July 1, 2009, to
607 June 30, 2014, inclusive, or for any action for the foreclosure of a
608 mortgage on real property owned by a religious organization with a
609 return date during the period from October 1, 2011, to June 30, 2014,
610 inclusive, the mediation period under the foreclosure mediation
611 program established in section 49-31m, as amended by this act, shall
612 commence when the court sends notice to each appearing party
613 scheduling the first foreclosure mediation session. The mediation
614 period shall conclude [not later than the date sixty days after the return
615 date for the foreclosure action] not later than the conclusion of the
616 third mediation session between the mortgagor and mortgagee or
617 seven months after the return date, whichever is earlier, except that the
618 court may, in its discretion, for good cause shown, [(A) extend, by not
619 more than thirty days, or shorten the mediation period on its own

620 motion or upon motion of any party, or (B) extend by not more than
621 thirty days the mediation period upon written request of the mediator]
622 upon the motion of any party or request by the mediator, extend the
623 mediation period subject to the provisions of subdivision (9) of this
624 subsection or shorten the mediation period.

625 (2) [The first mediation session shall be held not later than fifteen
626 business days after the court sends notice to each appearing party in
627 accordance with subdivision (4) of subsection (c) of section 49-31l. On
628 and after October 1, 2011, the first mediation session shall be held not
629 later than thirty-five days after the court sends notice to each
630 appearing party in accordance with subdivision (4) of subsection (c) of
631 this section. On and after October 1, 2011, not later than fifteen
632 business days prior to the date of the initial mediation session, the
633 mortgagee shall deliver to the mortgagor (A) an account history
634 identifying all credits and debits assessed to the loan account in the
635 immediately preceding twelve-month period, and (B) the name,
636 business mailing address, electronic mail address, facsimile number
637 and direct telephone number of an individual able to process requests
638 to refinance or modify the mortgage loan at issue or otherwise take
639 action to avoid foreclosure of the mortgage. Any updates to the
640 information provided pursuant to subparagraph (B) of this subdivision
641 shall be provided reasonably promptly to the mortgagor and such
642 mortgagor's counsel.] The mortgagor and mortgagee shall appear in
643 person at each mediation session and shall have [authority to agree to
644 a proposed settlement] the ability to mediate, except that [(i)] (A) if
645 [the mortgagee] a party is represented by counsel, the [mortgagee's]
646 party's counsel may appear in lieu of the [mortgagee] party to
647 represent the [mortgagee's] party's interests at the mediation, provided
648 [such counsel has the authority to agree to a proposed settlement] the
649 party has the ability to mediate, the mortgagor attends the first
650 mediation session in person and the [mortgagee] party is available [(I)]
651 (i) during the mediation session by telephone, and [(II)] (ii) to
652 participate in the mediation session by speakerphone, provided an
653 opportunity is afforded for confidential discussions between the

654 [mortgagee] party and [mortgagee's] party's counsel, [and (ii)] (B)
655 following the initial mediation session, if there are two or more
656 mortgagors who are self-represented, only one mortgagor shall be
657 required to appear in person at each subsequent mediation session
658 unless good cause is shown, provided the other mortgagors are
659 available [(I)] (i) during the mediation session, and [(II)] (ii) to
660 participate in the mediation session by speakerphone, [provided an
661 opportunity is afforded for confidential discussions among the
662 mortgagors and such mortgagors' counsel. The court shall not award
663 attorney's fees to any mortgagee for time spent in any mediation
664 session if the court finds that such mortgagee has failed to comply with
665 this subdivision, unless the court finds reasonable cause for such
666 failure.] and (C) if a party suffers from a disability or other significant
667 hardship that imposes an undue burden on such party to appear in
668 person, the mediator may grant permission to such party to participate
669 in the mediation session by telephone. A mortgagor's spouse, who is
670 not a mortgagor but who lives in the subject property, may appear at
671 each mediation session, provided all appearing mortgagors consent, in
672 writing, to such spouse's appearance or such spouse shows good cause
673 for his or her appearance and the mortgagors consent, in writing, to
674 the disclosure of nonpublic personal information to such spouse. If the
675 mortgagor has submitted a complete package of financial
676 documentation in connection with a request for a particular
677 foreclosure alternative, the mortgagee shall have thirty-five days from
678 the receipt of the completed package to respond with a decision and, if
679 the decision is a denial of the request, provide the reasons for such
680 denial. If the mortgagor has, in connection with a request for a
681 foreclosure alternative, submitted a financial package that is not
682 complete, or if the mortgagee's evaluation of a complete package
683 reveals that additional information is necessary to underwrite the
684 request, the mortgagee shall request the missing or additional
685 information within a reasonable period of time of such evaluation. If
686 the mortgagee's evaluation of a complete package reveals that
687 additional information is necessary to underwrite the request, the
688 thirty-five-day deadline for a response shall be extended but only for

689 so long as is reasonable given the timing of the mortgagor's submission
690 of such additional information and the nature and context of the
691 required underwriting. Not later than the third business day after each
692 mediation session, the mediator shall file with the court a report
693 indicating, to the extent applicable, (i) the extent to which each of the
694 parties complied with the requirements set forth in this subdivision,
695 including the requirement to engage in conduct that is consistent with
696 the objectives of the mediation program and to possess the ability to
697 mediate, (ii) whether the mortgagor submitted a complete package of
698 financial documentation to the mortgagee, (iii) a general description of
699 the foreclosure alternative being requested by the mortgagor, (iv)
700 whether the mortgagor has previously been evaluated for similar
701 requests, whether prior to mediation or in mediation, and, if so,
702 whether there has been any apparent change in circumstances since a
703 decision was made with respect to that prior evaluation, (v) whether
704 the mortgagee has responded to the mortgagor's request for a
705 foreclosure alternative and, if so, a description of the response and
706 whether the mediator is aware of any material reason not to agree with
707 the response, (vi) whether the mortgagor has responded to an offer
708 made by the mortgagee on a reasonably timely basis, and if so, an
709 explanation of the response, (vii) whether the mortgagee has requested
710 additional information from the mortgagor and, if so, the stated
711 reasons for the request and the date by which such additional
712 information shall be submitted so that information previously
713 submitted by the mortgagor, to the extent possible, may still be used
714 by the mortgagee in conducting its review, (viii) whether the
715 mortgagor has supplied, on a reasonably timely basis, any additional
716 information that was reasonably requested by the mortgagee, and, if
717 not, the stated reason for not doing so, (ix) if information provided by
718 the mortgagor is no longer current for purposes of evaluating a
719 foreclosure alternative, a description of the out-of-date information
720 and an explanation as to how and why such information is no longer
721 current, (x) whether the mortgagee has provided a reasonable
722 explanation of the basis for a decision to deny a request for a loss
723 mitigation option or foreclosure alternative and whether the mediator

724 is aware of any material reason not to agree with that decision, (xi)
725 whether the mortgagee has complied with the timeframes set forth in
726 this subdivision for responding to requests for decisions, (xii) if a
727 subsequent mediation session is expected to occur, a general
728 description of the expectations for such subsequent session and for the
729 parties prior to such subsequent session and, if not otherwise
730 addressed in the report, whether the parties satisfied the expectations
731 set forth in previous reports, and (xiii) a determination of whether the
732 parties will benefit from further mediation. The mediator shall deliver
733 a copy of such report to each party to the mediation when the mediator
734 files the report. The parties shall have the opportunity to submit their
735 own supplemental information following the filing of the report,
736 provided such supplemental information shall be submitted not later
737 than five business days following the receipt of the mediator's report.
738 Any request by the mortgagee to the mortgagor for additional or
739 updated financial documentation shall be made in writing. The court
740 may impose sanctions on any party or on counsel to a party if such
741 party or such counsel engages in intentional or a pattern or practice of
742 conduct during the mediation process that is contrary to the objectives
743 of the mediation program. Any sanction that is imposed shall be
744 proportional to the conduct and consistent with the objectives of the
745 mediation program. Available sanctions shall include, but not be
746 limited to, terminating mediation, ordering the mortgagor or
747 mortgagee to mediate in person, forbidding the mortgagee from
748 charging the mortgagor for the mortgagee's attorney's fees, awarding
749 attorney's fees, and imposing fines. In the case of egregious
750 misconduct, the sanctions shall be heightened. The court shall not
751 award attorney's fees to any mortgagee for time spent in any
752 mediation session if the court finds that such mortgagee has failed to
753 comply with this subdivision, unless the court finds reasonable cause
754 for such failure.

755 (3) [Not later than two days after the conclusion of the first
756 mediation session, the mediator shall determine whether the parties
757 will benefit from further mediation. The mediator shall file with the

758 court a report setting forth such determination and mail a copy of such
759 report to each appearing party.] If the mediator reports to the court
760 that the parties will not benefit from further mediation, the mediation
761 period shall terminate automatically. If the mediator reports to the
762 court after the first or second mediation session that the parties may
763 benefit from further mediation, the mediation period shall continue.
764 [Either party's failure to comply with the documentation requirements
765 of this section or section 49-31l shall not be grounds for terminating the
766 mediation period before a second mediation session is conducted.]

767 (4) [If the mediator has submitted a report to the court that the
768 parties may benefit from further mediation pursuant to subdivision (3)
769 of this subsection, not more than two days after the conclusion of the
770 mediation, but not later than the termination of the mediation period
771 set forth in subdivision (1) of this subsection, the mediator shall file a
772 report with the court describing the proceedings and specifying the
773 issues resolved, if any, and any issues not resolved pursuant to the
774 mediation. The filing of the report shall terminate the mediation period
775 automatically.] If the mediation period concludes and certain issues
776 have not been resolved pursuant to the mediation, the mediator may
777 refer the mortgagor to any appropriate community-based services that
778 are available in the judicial district, but any such referral shall not
779 cause a delay in the mediation process.

780 (5) The Chief Court Administrator shall establish policies and
781 procedures to implement this subsection. Such policies and procedures
782 shall, at a minimum, provide that the mediator shall advise the
783 mortgagor at the first [mediation session] meeting required by
784 [subdivision (2) of this subsection] subdivision (4) of subsection (c) of
785 section 49-31l, as amended by this act, that: (A) Such mediation does
786 not suspend the mortgagor's obligation to respond to the foreclosure
787 action beyond the limited time frame described in subdivision (6) of
788 subsection (c) of section 49-31l, as amended by this act; and (B) a
789 judgment of strict foreclosure or foreclosure by sale may cause the
790 mortgagor to lose the residential real property or real property owned
791 by a religious organization to foreclosure.

792 (6) In no event shall any determination issued by a mediator under
793 this program form the basis of an appeal of any foreclosure judgment.

794 (7) The foreclosure mediation program shall terminate when all
795 mediation has concluded with respect to any foreclosure action with a
796 return date during the period from July 1, 2009, to June 30, 2014,
797 inclusive.

798 (8) At any time during the mediation period, the mediator may refer
799 a mortgagor who is the owner-occupant of one-to-four family
800 residential real property to the mortgage assistance programs, except
801 that any such referral shall not prevent a mortgagee from proceeding
802 to judgment when the conditions specified in subdivision (6) of
803 subsection (c) of section 49-311, as amended by this act, have been
804 satisfied.

805 (9) (A) The mediation period shall conclude following the third
806 mediation session or if more than seven months have elapsed since the
807 return date. Not later than fifteen days following the conclusion of the
808 mediation period, and any subsequent extended mediation sessions
809 held in accordance with this subdivision, any party may move for, or
810 the mediator may request, an extension of the mediation period. The
811 court shall grant only one additional mediation session per motion or
812 request upon a finding that it is highly probable the parties will reach
813 an agreement through mediation. The court may also grant one
814 additional mediation session per motion or request upon a finding that
815 any party has engaged, either intentionally or by a pattern or practice,
816 in conduct that is contrary to the objectives of the mediation program.
817 The court shall make its ruling not later than twenty days after the
818 filing of such motion or request, and no judgment of strict foreclosure
819 or any judgment ordering a foreclosure sale shall be entered until (i)
820 the court denies the motion or request, or (ii) the conclusion of the
821 subsequent extended mediation session, except as provided in
822 subparagraph (B) of this subdivision. Upon the grant of an additional
823 mediation session following the proper finding, the court shall
824 establish a reasonably expeditious deadline for such subsequent

825 extended mediation session to occur. Such extended mediation period
826 shall conclude following such subsequent extended mediation session.

827 (B) The mediation period may be extended for one additional
828 mediation session without a hearing held pursuant to this subdivision
829 provided all parties to the mediation agree that such parties would
830 benefit from such a session and, in consultation with the mediator,
831 establish a reasonably expeditious deadline for such session to take
832 place.

833 (C) To determine whether to extend mediation, the court may
834 consider all matters that have arisen in the mediation, including, but
835 not limited to, the number of motions to extend mediation, the reasons
836 for which an agreement has not been reached, the objectives of the
837 mediation program, the extent to which the parties will benefit from
838 further mediation, the reports submitted by the mediator, papers
839 submitted in connection with any motion, and any supplemental
840 reports submitted by a party. The court shall articulate its reasons in
841 the order granting or denying any such motion or request to extend
842 mediation.

843 (10) For any case pending as of October 1, 2013, in which mediation
844 is ongoing, (A) if three or fewer sessions have been held, such case
845 shall be treated as if no sessions have been held as of said date for
846 purposes of subdivision (9) of this subsection, and (B) if four or more
847 sessions have been held, then any party or the mediator may move to
848 terminate the mediation period or extend such period in accordance
849 with subdivision (9) of this subsection and, if no such motion to extend
850 is made, the mediation period shall conclude after the third mediation
851 session occurring after October 1, 2013.

852 (d) (1) Not later than February 14, 2014, the Chief Court
853 Administrator shall submit, in accordance with the provisions of
854 section 11-4a, to the joint standing committee of the General Assembly
855 having cognizance of matters relating to banks, a summary regarding
856 the mediation program and a general summary of the data collected in

857 the reports submitted pursuant to subdivision (2) of subsections (b)
858 and (c) of this section from July 1, 2013, to December 31, 2013,
859 inclusive. Such summaries shall include, but not be limited to, the
860 aggregate data regarding the number of cases in mediation, the
861 number of mediation sessions held, the number of agreements reached
862 before the conclusion of the mediation period, the number of motions
863 or requests for an extension or continuance and the identity of the
864 party that made such a motion or request, whether the loan at issue
865 was serviced by a third party, the judicial district in which the
866 mediation took place and whether the mortgagor was self-represented.

867 (2) Not later than February 14, 2015, the Chief Court Administrator
868 shall submit, in accordance with the provisions of section 11-4a, to the
869 joint standing committee of the General Assembly having cognizance
870 of matters relating to banks, a summary of the reports submitted from
871 July 1, 2013, to December 31, 2014, inclusive, pursuant to subdivision
872 (2) of subsections (b) and (c) of this section. The detailed data points for
873 such summary, including data to be collected but not reported, shall be
874 developed by the Chief Court Administrator in consultation with
875 representatives from the Governor's office, the banking industry and
876 consumer advocates.

877 Sec. 5. (NEW) (*Effective July 15, 2013*) (a) In a foreclosure action, the
878 mortgagee may, notwithstanding any other law or rule to the contrary,
879 file a motion for judgment of foreclosure simultaneously with a motion
880 for default for failure to appear, if such mortgagee proves, by clear and
881 convincing evidence and the use of a proper affidavit, that the real
882 property that is the subject of the foreclosure action is not occupied by
883 a mortgagor, tenant or other occupant and not less than three of the
884 following conditions exist:

885 (1) Statements of neighbors, delivery persons or government
886 employees indicating that the property is vacant and abandoned;

887 (2) Windows or entrances to the property that are boarded up or
888 closed off or multiple window panes that are damaged, broken or

889 unrepaired;

890 (3) Doors to the property are smashed through, broken off,
891 unhinged or continuously unlocked;

892 (4) Risk to the health, safety or welfare of the public or any
893 adjoining or adjacent property owners that exists due to acts of
894 vandalism, loitering, criminal conduct or the physical destruction of
895 the property;

896 (5) An order by municipal authorities declaring the property to be
897 unfit for occupancy and to remain vacant and unoccupied;

898 (6) The mortgagee secured or winterized the property due to the
899 property being deemed vacant and unprotected or in danger of
900 freezing; or

901 (7) A written statement issued by any mortgagor or tenant
902 expressing the clear intent of all occupants to abandon the property.

903 (b) A foreclosure action shall not proceed under the expedited
904 procedures contemplated under subsection (a) of this section if there is
905 on the property (1) an unoccupied building undergoing construction,
906 renovation or rehabilitation that is (A) proceeding diligently toward
907 completion, and (B) in compliance with all applicable ordinances,
908 codes, regulations and statutes, (2) a secure building occupied on a
909 seasonal basis, or (3) a secure building that is the subject of a probate
910 action to quiet title or other ownership dispute.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 15, 2013</i>	49-31k
Sec. 2	<i>July 15, 2013</i>	49-31l
Sec. 3	<i>July 15, 2013</i>	49-31m
Sec. 4	<i>July 15, 2013</i>	49-31n
Sec. 5	<i>July 15, 2013</i>	New section

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill expands the scope of the foreclosure mediation program located within the Judicial Department and does not result in a fiscal impact. This bill conforms statute to current practice as the foreclosure mediation program already covers all types of settlement options, including short sales and deeds in lieu of foreclosure.

House "A" (LCO 7552) is technical and results in no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 6355 (as amended by House "A")******AN ACT CONCERNING HOMEOWNER PROTECTION RIGHTS.*****SUMMARY:**

This bill expands the scope of the state's foreclosure mediation program by requiring that the program also address the disposition of property through means other than foreclosure, including short sales and deeds in lieu of foreclosure. It adds a requirement that mediators be unbiased and prohibits them from giving legal advice to any party in mediation.

The bill extends the foreclosure mediation program two years, to June 30, 2014, for foreclosure actions with return dates of July 1, 2008 through June 30, 2009. The program already runs until June 30, 2014 for foreclosure actions with return dates of July 1, 2009 through June 30, 2014.

The bill identifies the "objectives of the mediation program" and requires parties to attend foreclosure mediation sessions having the "ability to mediate," which means a willingness and a reasonable ability to participate in the mediation process.

It establishes a pre-mediation process, during which the mediator and the mortgagor must meet. A newly prescribed mediation information form must be used for foreclosure actions with certain return dates.

The bill requires the delivery of (1) a complete financial package, from the mortgagor to the mortgagee, in connection with a request for a foreclosure alternative and (2) an account history and related information from the mortgagee to the mediator and the mortgagor after receiving notification that the case has been assigned to

mediation.

The bill requires the mediator to file a report with the court within three business days after each mediation session indicating, among other things, whether the parties will benefit from further mediation. It establishes new requirements for when to end or extend the mediation period.

The bill requires the chief court administrator to submit summaries of the mediators' reports to the Banks Committee by February 14, 2014 and February 14, 2015. She must work with the governor's office, the banking industry, and consumer advocates to develop some of the required data.

Lastly, the bill establishes expedited foreclosure procedures for vacant and abandoned properties.

*House Amendment "A" replaces the underlying bill with similar provisions, making numerous minor and technical changes. It also (1) requires the chief court administrator to report on the mediation program to the Banks Committee, (2) deletes the provisions on special pleadings for mortgagors and recording fees, and (3) changes the effective date to July 15, 2013 instead of upon passage.

EFFECTIVE DATE: July 15, 2013

FORECLOSURE MEDIATION PROGRAM

§ 3 — Scope of the Program

By law, the chief court administrator must, in each judicial district, establish a foreclosure mediation program in actions to foreclose mortgages on residential real property or real property owned by a religious organization.

By law, foreclosure mediation must address all issues of foreclosure, including:

1. reinstatement of the mortgage,

2. assignment of law days,
3. assignment of sale date,
4. restructuring of the mortgage debt, and
5. foreclosure by decree of sale.

The bill expands the scope of foreclosure mediation to include the disposition of the property through means other than foreclosure, including short sales and deeds in lieu of foreclosure.

By law, foreclosure mediation must be conducted by foreclosure mediators who (1) are employed by the Judicial Branch, (2) are trained in mediation and all relevant aspects of the law, (3) know about available community-based resources, and (4) know about the mortgage assistance programs. The bill requires mediators to be unbiased and prohibits them from giving legal advice to any party in mediation.

§ 1 — Objectives of the Program

Objectives of the mediation program include:

1. determining whether the parties can reach an agreement that will (a) avoid foreclosure by considering any loss mitigation options available through the mortgagee or (b) expedite or facilitate the foreclosure in a manner acceptable to the parties and
2. an expectation that all parties will try to reach such determination with reasonable speed and efficiency by participating in the mediation process in good faith without unreasonable and unnecessary delays.

§ 1 — Definitions

By law, “mortgagor” means: (1) the owner-occupant of one-to-four family residential real property located in Connecticut who is also the borrower under a mortgage encumbering such residential real

property, which is the primary residence of the owner-occupant, or (2) a religious organization that is the owner of real property located in Connecticut and the borrower under a mortgage encumbering such real property. The bill explicitly excludes from the definition of mortgagor an heir or occupying nonowner of a property encumbered by a reverse annuity mortgage.

The bill defines “mortgagee” as the owner or servicer of the debt secured by a mortgage on residential real property or real property owned by a religious organization securing a loan made primarily for personal, family, religious, or household purposes that is the subject of a foreclosure action. Under current law, a mortgagee is the original owner or its successors or assigns who is the holder of any such mortgage.

Under the bill, “ability to mediate” means exhibiting a willingness, including a reasonable ability, to participate in the mediation process (1) in a manner consistent with the objectives of the mediation program and (2) in conformity with any obligations imposed by the program, including:

1. a willingness and reasonable ability to respond to questions and specify or estimate when particular decisions will be made or particular information will be provided and
2. with respect to mortgagees, a reasonable familiarity with the loan file, the loss mitigation options available to the mortgagor, and the material issues raised in prior mediation sessions which may be achieved by becoming reasonably familiar with the mediator reports.

§ 2 — FORECLOSURE MEDIATION TIMELINES

Under current law, the foreclosure mediation program establishes separate timelines and requirements depending on the return date (i.e. the day by which certain action must be taken) of the foreclosure action, as follows:

1. return date of July 1, 2008 through June 30, 2009, for residential real property;
2. return date of July 1, 2009 through June 30, 2014, for residential real property; and
3. return date of October 1, 2011 through June 30, 2014, for real property owned by a religious organization.

Return Date of July 1, 2008 through June 30, 2009 for Residential Real Property

By law, the foreclosure mediation program for foreclosure actions on residential real property with return dates from July 1, 2008 through June 30, 2009 closed June 30, 2012. With regard to such return dates, on or after July 1, 2012, (1) no foreclosure action may commence and (2) no foreclosure mediation request form may be submitted to the court. This bill reopens and extends the foreclosure mediation program for foreclosure actions on residential real property with return dates from July 1, 2008 through June 30, 2009 by two years, through June 30, 2014. Therefore, the court is prohibited from accepting foreclosure mediation request forms on or after July 1, 2014 for foreclosure actions with return dates from July 1, 2008 through June 30, 2009.

By law, when a mortgagee begins an action for the foreclosure of a mortgage on residential real property with a return date from July 1, 2008 through June 30, 2009, the following process and timeline apply:

1. the mortgagee must give notice to the mortgagor of the foreclosure mediation program and, among other things, provide a foreclosure mediation request form;
2. a mortgagor may request foreclosure mediation by submitting the foreclosure mediation request form to the court and filing an appearance within 15 days after the return date for the foreclosure action; and
3. upon receipt of the foreclosure mediation request form, the court

must notify each appearing party that a foreclosure mediation request form has been submitted by the mortgagor.

Under current law, the court may grant a mortgagor permission to submit a foreclosure mediation request form and file an appearance after the 15-day period if good cause is shown, but no foreclosure mediation request form may be submitted and no appearance may be filed more than 25 days after the return date. The bill removes the 25-day limit and allows the court to extend the period so long as good cause is shown.

Return Date of July 1, 2009 through June 30, 2014 for Residential Real Property; and October 1, 2011 through June 30, 2014 for Real Property Owned by a Religious Organization

The bill makes several changes to the foreclosure mediation timeline and requirements for foreclosure actions with a return date of July 1, 2009 through June 30, 2014, for residential real property and October 1, 2011 through June 30, 2014, for real property owned by a religious organization, as follows.

Mediation Information Form. By law, when a mortgagee begins foreclosure action on residential real property with a return date on or after July 1, 2009, or, with respect to real property owned by a religious organization, a return date on or after October 1, 2011, the mortgagee must give notice to the mortgagor of the foreclosure mediation program. The notice must include:

1. a copy of the notice of foreclosure mediation;
2. a copy of the foreclosure mediation certificate form;
3. a blank appearance form; and
4. with respect to an action for the foreclosure of a mortgage on residential real property with a return date on or after October 1, 2011, a mediation information form and a notice containing contact information for authority-approved consumer credit counseling agencies.

The bill limits the use of the current mediation information to foreclosure actions with a return date from October 1, 2011 through September 30, 2013, and establishes a new mediation information form which must be used for an action to foreclose a mortgage on residential real property with a return date on or after October 1, 2013. The new mediation information form must:

1. instruct the mortgagor on the objectives of the mediation program,
2. explain the process of preliminary meetings with the mediator,
3. instruct the mortgagor to begin gathering financial documentation commonly used in foreclosure mediation; and
4. include contact information for authority-approved consumer counseling agencies.

The bill requires the chief court administrator to design the mediation information form, in consultation with banking industry representatives and consumer advocates, to further the objectives of the program.

Preparation for Mediation. By law, the court issues a notice of foreclosure mediation to the mortgagor within three business days after the date the mortgagee returns the writ to the court. Under current law, the notice must (1) instruct the mortgagor to file the appearance and foreclosure mediation certificate forms with the court within 15 days after the return date for the foreclosure action and (2) remind the mortgagor to deliver the completed mediation information form and the accompanying documentation. The bill limits the reminder to complete the mediation information form to actions with a return date on or after October 1, 2011 through September 30, 2013. For actions with a return date on or after October 1, 2013, the bill requires that the notice instruct the mortgagor, for purpose of pre-mediation meetings and mediation, to begin gathering financial information commonly used in foreclosure mediation.

By law, authority-approved housing counseling agencies may help prepare the mediation information form. The bill broadens this by allowing them to help prepare for mediation in general.

Assignment of Case to Mediation. Under current law, the court must schedule a date for foreclosure mediation and notify all appearing parties of the date when it receives the mortgagor's appearance and foreclosure mediation certificate forms, provided the court confirms the defendant in the foreclosure action is a mortgagor and the mortgagor has sent a copy of the mediation certificate form to the plaintiff.

The bill instead requires that the court assign the case to mediation at this time and notify all appearing parties of the assignment and of an e-mail address to be used for all mediation-related communications. The bill prohibits the court from assigning the case to mediation if the appearance and foreclosure mediation certificate forms are not received from the mortgagor within 15 days after the return date.

Account History Requirement. The bill requires the mortgagee or its counsel, upon receiving the notice of assignment of the case to mediation and within 35 days of the return date, to send via e-mail to the mediator and via first class, priority, or overnight mail to the mortgagor:

1. an account history identifying all credits and debits assessed to the loan account and any related escrow account in the immediately preceding 12 months and an itemized statement of the amount needed to reinstate the mortgage, with information, written in plain language, to explain any codes used in the history and statement which are not otherwise self-explanatory;
2. the name, business mailing address, e-mail address, fax number, and direct telephone number of someone who can respond with reasonable adequacy and promptness to questions about the information submitted, and provide prompt updates to such contact information;

3. all reasonably necessary forms and a list of all documentation reasonably needed for the mortgagee to evaluate the mortgagor for common foreclosure alternatives that are available through the mortgagee, if any;
4. a copy of the note and mortgage;
5. summary information regarding the status of any pending foreclosure avoidance efforts being undertaken by the mortgagee;
6. a copy of any loss mitigation affidavit filed with the court; and
7. at the mortgagee's option, (a) the history of foreclosure avoidance efforts, (b) information regarding the condition of the mortgaged property, and (c) other information the mortgagee determines relevant to meeting the objectives of the mediation program.

Mediator and Mortgagor Pre-mediation Meetings. The bill requires the court to (1) assign a mediator and (2) schedule a meeting with the mediator and the mortgagor after the mediator receives the account history information. The court must hold the meeting if possible within 49 days following the return date. The notice of the meeting must instruct the mortgagor to (1) complete the forms before the meeting and (2) provide the forms and listed documentation, provided by the mortgagee, at the pre-mediation meeting.

The bill requires the mediator, at the meeting, to review the forms and documentation with the mortgagor along with the information supplied by the mortgagee. This review is to (1) discuss the options available to the mortgagor, including community-based resources, and (2) help the mortgagor complete the forms and provide the documentation necessary for the mortgagee to evaluate the mortgagor for foreclosure alternatives.

The bill allows the mediator to schedule subsequent meetings with

the mortgagor and determine whether any mortgagor may be excused from appearing in person at any subsequent meeting.

Delivery of Forms and Documents to Mortgagee. The bill requires the mediator to, as soon as practicable within 84 days following the return date, facilitate and confirm submission of the forms and documentation by the mortgagor to (1) the mortgagee's counsel electronically and (2) at the mortgagee's election, directly to the mortgagee per the mortgagee's instruction.

Mediator's Report to the Court and the Court's Notice. The bill also requires the mediator to, as soon as practicable within 84 days following the return date, file a report with the court, based on the mortgagor's attendance at the meetings and the extent the mortgagor completed the forms and furnished the required documentation, or failed to perform such tasks through no material fault of the mortgagee. The report must indicate:

1. whether mediation must be scheduled with the mortgagee,
2. whether the mortgagor attended scheduled meetings with the mediator,
3. whether the mortgagor fully or substantially completed the forms and provided the documentation requested by the mortgagee,
4. the date on which the mortgagee supplied the forms and documentation, and
5. any other information the mediator determines to be relevant to the objectives of the mediation program.

The bill specifies that no meeting or communication between the mediator and mortgagor should be treated as an impermissible *ex parte* communication.

If the mediator determines that the mortgagee must participate in

mediation, the court must promptly issue notice of this to all parties and schedule a mediation session between the mortgagee and mortgagor. The bill requires that the first mediation session be held within five weeks following the submission of the required forms and documentation to the mortgagee.

If the mediator determines that no sessions between the mortgagee and mortgagor should be scheduled, the court must promptly issue notice of this to all parties and mediation must be terminated. The bill allows any mortgagor wishing to contest this determination to petition the court and show good cause for being included in the mediation program, including (1) a material change in financial circumstances or (2) a mistake or misunderstanding of the facts by the mediator.

Court Referral to Mediation. Under current law, the court may refer a foreclosure action to the foreclosure mediation program at any time if (1) the mortgagor has filed an appearance and (2) the court sends a notice to each appearing party within three business days after making the referral. The bill limits the referral to when good cause is shown. The bill specifies that, when determining whether good cause exists, the court must consider (1) whether the parties are likely to benefit from mediation and (2) in the case of a referral after prior attempts at mediation have been terminated, whether there has been a material change in circumstances.

Under current law, the court's referral notice schedules the first foreclosure mediation session within 35 days after the date of the referral. The bill instead requires the referral notice to assign the case to mediation and require the parties to participate in the pre-mediation process (described above). The court must establish deadlines to ensure that the pre-mediation process is completed as expeditiously as possible.

Special Pleadings during the Eight-month Stay. Under current law, there is an eight-month stay on pleadings from the return date of the foreclosure action. The bill allows the mortgagor to file an answer,

special defenses, or counterclaims during this period.

Strict Foreclosure/Foreclosure by Sale (see BACKGROUND).

Under current law, a judgment of strict foreclosure or foreclosure by sale cannot be entered on a mortgage for residential real property or real property owned by a religious organization that is in foreclosure mediation unless (1) the mediation period has expired or terminated, and (2) if it is less than eight months after the return date, 15 days have passed since the mediation period terminated. The bill requires that if it is less than eight months after the return date and 15 days have passed since the period terminated, any pending motions or request to extend the mediation period must also be heard and denied by the court before any such judgment can be ordered.

§ 4 — MEDIATION PERIOD, INFORMATION REQUIRED, AND TERMINATION

By law, the mediation period, information required, and mediation termination depend on the return date of the foreclosure action, as follows:

1. return date of July 1, 2008 through June 30, 2009, for residential real property;
2. return date of July 1, 2009 through June 30, 2014, for residential real property; and
3. return date of October 1, 2011 through June 30, 2014, for real property owned by a religious organization.

The following information applies to all return dates unless otherwise stated.

Conclusion of the Mediation Period

Under current law, the mediation period must conclude within 60 days after the return date for the foreclosure action except the court has the discretion to, for good cause shown, (1) extend, up to 30 days, or shorten the mediation period on its own motion or upon motion of

any party, or (2) extend by up to 30 days the mediation period upon written request of the mediator. The bill instead requires the mediation period to end by the end of the third mediation session or seven months after the return date, whichever is earlier. It removes the 30-day limit on the court's discretion to extend the period.

Under current law, the court has the discretion to extend or shorten the mediation period for good cause. The bill limits the exercise of this discretion to only if a party or the mediator makes such a request.

Appearance at Mediation Sessions

Current law requires that the mortgagor and mortgagee appear in person at each mediation session and with authority to agree to a proposed settlement. The bill requires, instead, that the parties appear at each session with the ability to mediate. Current law makes an exception for a mortgagee who is represented by counsel under certain circumstances. The bill makes this exception apply to all parties, but requires that the mortgagor attend the first mediation session in person.

Under current law, following the first mediation session, if there are two or more mortgagors, only one mortgagor must appear in person at each subsequent mediation session unless good cause is shown, if the other mortgagors are available (1) during the mediation session and (2) to participate in the mediation session by speakerphone, if an opportunity is afforded for confidential discussions among the mortgagors and the mortgagors' counsel. The bill removes the condition that there must be an opportunity for confidential discussions and limits this provision to apply to mortgagors who represent themselves.

The bill allows the mediator to grant permission to a party to participate in the mediation session by telephone if the party suffers from a disability or other significant hardship that imposes an undue burden on such party to appear in person.

The bill allows a mortgagor's spouse, who is not a mortgagor but who lives in the subject property, to appear at each mediation session, if (1) all appearing mortgagors consent, in writing, to the spouse's appearance or the spouse shows good cause for his or her appearance and (2) the mortgagors consent, in writing, to the disclosure of nonpublic personal information to the spouse.

Complete Financial Package

If the mortgagor has submitted a complete package of financial documentation in connection with a request for a particular foreclosure alternative, the bill requires the mortgagee to (1) respond with a decision within 35 days from the receipt of the completed package and (2) if the decision is a denial, provide the reasons for the denial.

The bill requires the mortgagee to request any missing or additional information within a reasonable period of time of that evaluation if (1) the mortgagor submitted a financial package that is not complete or (2) the mortgagee's evaluation of a complete package reveals that additional information is necessary to underwrite a request for a foreclosure alternative.

The bill allows the mortgagee's response date to be extended beyond the 35-day deadline if the mortgagee's evaluation of a complete package reveals that additional information is necessary to underwrite the request, but only for so long as is reasonable given (1) the timing of the mortgagor's submission of the additional information and (2) the nature and context of the required underwriting.

Mediator's Report

The bill requires the mediator to file a report with the court within three business days after each mediation session. The report must indicate:

1. the extent to which each party complied with the mediation program requirements;

2. whether the mortgagor submitted a complete package of financial documentation to the mortgagee;
3. a general description of the foreclosure alternative being requested by the mortgagor;
4. whether the mortgagor has previously been evaluated for similar requests, and, if so, whether there has been any apparent change in circumstances since the decision in the prior evaluation;
5. whether the mortgagee has responded to the mortgagor's request for a foreclosure alternative and, if so, a description of the response and whether the mediator is aware of any material reason not to agree with the response;
6. whether the mortgagor has responded to an offer made by the mortgagee on a reasonably timely basis, and if so, an explanation of the response;
7. whether the mortgagee has requested additional information from the mortgagor and, if so, the stated reasons for the request and the date by which such additional information must be submitted;
8. whether the mortgagor has supplied, on a reasonably timely basis, any additional information that was reasonably requested by the mortgagee, and, if not, the stated reason for not doing so;
9. if information provided by the mortgagor is no longer current for purposes of evaluating a foreclosure alternative, a description of the out-of-date information and an explanation of how and why such information is no longer current;
10. whether the mortgagee has provided a reasonable explanation of the basis for a decision to deny a request for a loss mitigation option or foreclosure alternative and whether the mediator is aware of any material reason not to agree with that decision;

11. whether the mortgagee has complied with the bill's timeframes for responding to requests for decisions;
12. if a subsequent mediation session is expected to occur, a general description of the expectations for that session and for the parties prior to that session, and if not already addressed in the report, whether the parties satisfied the expectations described in previous reports; and
13. whether the parties will benefit from further mediation.

The bill requires the mediator to deliver a copy of the report to all the parties at the time he or she files it with the court. The bill allows the parties the opportunity to submit their own supplemental information following the filing of the mediator's report but they must do so within five business days after receiving the mediator's report. Requests for additional or updated financial documentation must be made in writing.

Court Sanctions

The bill allows the court to impose sanctions on any party or on a party's counsel who, during the mediation process, engages in intentional, or a pattern or practice of, conduct contrary to the objectives of the mediation program.

Under the bill, any sanction imposed must be proportional to the conduct and consistent with the objectives of the mediation program. Available sanctions include (1) terminating mediation, (2) ordering the mortgagor or mortgagee to mediate in person, (3) forbidding the mortgagee from charging the mortgagor for the mortgagee's attorney's fees, (4) awarding attorney's fees, and (5) imposing fines. In egregious situations the sanctions must be more severe.

By law, the court is prohibited from awarding attorney's fees to a mortgagee for time spent in any mediation session if the mortgagee fails to comply with the requirements of the mediation sessions without good cause.

Continuation of the Mediation Sessions

Under current law, if the mediator reports to the court after the first mediation session that the parties may benefit from further mediation, the mediation period must continue. The bill extends this to the second session.

Under current law, for foreclosure actions with a return date of July 1, 2009 through June 30, 2014 for residential real property and return date of October 1, 2011 through June 30, 2014 for real property owned by a religious organization, failure to comply with the documentation requirements of the mediation program is not grounds for terminating the mediation period before a second mediation session is conducted. The bill deletes this provision.

Under current law, if the mediation period ends with unresolved issues, the mediator is allowed to refer the mortgagor to appropriate community-based services available in the judicial district, where the mediation is taking place. The bill allows the referral to these service in any judicial districts.

Policies and Procedures

Under current law, the chief court administrator must establish policies and procedures that, at a minimum, require the mediator to advise the mortgagor at the first mediation session that (1) mediation does not suspend the mortgagor's obligation to respond to the foreclosure action and (2) a judgment of strict foreclosure or foreclosure by sale may cause the mortgagor to lose the property to foreclosure. The bill requires that the mediator provide this advice at the first pre-mediation meeting instead. For foreclosure actions with a return date of July 1, 2008 through June 30, 2009, the bill removes the requirement to advise the mortgagor that mediation does not suspend the mortgagor's obligation to respond to the foreclosure action.

Conclusion or Extension of the Mediation Period

The bill specifies that the mediation period ends after the third mediation session or if seven months have passed since the return

date. It allows the period to be extended if a party or the mediator requests an extension within 15 days after the conclusion of the period and any extended sessions. The court must make its ruling within 20 days after the filing of the motion or request and is limited to granting one session per request if it is highly probable that the parties will reach an agreement. A judgment of strict foreclosure or foreclosure by sale cannot be entered until the court denies the motion or request to extend the mediation period or at the end of any extended sessions granted. The bill requires the court to set an expeditious deadline for any extended mediation sessions granted.

The bill allows the court to consider all matters that have come up in mediation when determining whether to extend mediation, including:

1. the number of motions to extend mediation,
2. the reasons why an agreement has not been reached,
3. the objectives of the mediation program,
4. whether parties will benefit from further mediation,
5. the mediator's reports,
6. papers that are submitted with motions, and
7. supplemental reports submitted by the parties.

The court must include its reasons in the order granting or denying a motion or request to extend mediation.

Under the bill, if all parties agree that they would benefit from an additional session, the mediation period may be extended for one session without a hearing. The parties must consult with the mediator to set an expeditious deadline for the additional session.

Cases Pending on October 1, 2013

For any case pending on October 1, 2013 in which mediation is

ongoing, the bill specifies how sessions should be counted for purposes of determining if mediation should end or be extended. Specifically, if three or fewer sessions have been held by that date, the case must be treated as if no sessions have been held. But, if four or more sessions have been held, any party or the mediator may move to end or extend mediation. If no motion is filed, the mediation period ends after the third session that is held after October 1, 2013.

§ 4 — REPORTING REQUIREMENT

The bill requires the chief court administrator to submit to the Banks Committee, by February 14, 2014, a summary of the mediation program and specified data collected from the mediators' reports that were submitted from July 1, 2013 to December 31, 2013. The summary must include:

1. the aggregate number of (a) cases in mediation, (b) mediation sessions held, (c) agreements reached before the conclusion of the mediation period, and (d) motions or requests for an extension or continuance and the identity of the party that made such a motion or request;
2. whether the loan was serviced by a third party;
3. the judicial district where the mediation took place; and
4. whether the mortgagor was self-represented.

The bill also requires the chief court administrator to submit a second summary to the Banks Committee, by February 14, 2015, of data collected from mediators' reports submitted from July 1, 2013 to December 31, 2014. The chief court administrator must work with the governor's office, the banking industry, and consumer advocates to develop the data points required for the second summary, including data to be collected but not reported.

§ 5 — EXPEDITED FORECLOSURE PROCEDURES FOR VACANT AND ADANDONED PROPERTIES

Expedited Proceedings Permitted

The bill allows an expedited foreclosure action by allowing a mortgagee to file a motion for judgment of foreclosure simultaneously with a motion for default for failure to appear. This is allowed only if the mortgagee proves by clear and convincing evidence, and with a proper affidavit, that (1) the real property that is the subject of the foreclosure action is not occupied by a mortgagor, tenant, or other occupant and (2) at least three of the following conditions exist:

1. statements of neighbors, delivery persons, or government employees indicate that the property is vacant and abandoned;
2. windows or entrances are boarded up or closed off or multiple window panes are damaged, broken, or unrepaired;
3. doors to the property are smashed through, broken off, unhinged, or continuously unlocked;
4. acts of vandalism, loitering, criminal conduct, or physical destruction of the property create a risk to the health, safety, or welfare of the public or any adjoining or adjacent property owners;
5. a municipal order declares the property (a) unfit for occupancy and (b) must remain vacant and unoccupied;
6. the mortgagee secured or winterized the property because the property was deemed vacant and unprotected or in danger of freezing; or
7. a written statement by any mortgagor or any tenant expressing the clear intent of all occupants to abandon the property.

Expedited Proceedings Prohibited

The bill prohibits a foreclosure action from proceeding under expedited procedures if the property includes any of the following:

1. an unoccupied building undergoing construction, renovation, or

rehabilitation that is moving toward completion and is in compliance with all applicable ordinances, codes, regulations, and statutes;

2. a secure building occupied on a seasonal basis; or
3. a secure building that is the subject of a probate action to quiet title or other ownership dispute.

BACKGROUND

Related Bill

HB 6419 (File 214), favorably reported by the Housing Committee, extends the judicial foreclosure mediation program by two years, until July 1, 2016. This extension applies to foreclosure actions with return dates on or after July 1, 2009 for residential real property and October 1, 2011 for real property owned by a religious organization.

Foreclosure by Sale

With a decree of sale, the court (1) establishes the time and manner of the sale, (2) appoints a committee to sell the property, and (3) appoints three appraisers to determine the value of the property. The borrower may stop the foreclosure proceedings at any time before the sale by paying the balance due on the mortgage. If no such payment is made, the committee must go forward with the sale. The lender may sue to obtain a deficiency judgment.

Strict Foreclosure

With strict foreclosure, no actual foreclosure sale is held. Instead, the lender goes to court to try and obtain a court order demonstrating the borrower is in default of the mortgage. If successful, the title transfers to the lender immediately. However, the court sets an amount of time in which the borrower may redeem the property. If he or she fails to do so, the title becomes absolute to the lender and the borrower no longer has any claim to the property. The lender then has 30 days to record a certificate of foreclosure, which must contain a description of the property, the foreclosure proceedings, the mortgage,

and the date the title became absolute.

COMMITTEE ACTION**Banks Committee**

Joint Favorable Substitute

Yea 11 Nay 6 (03/14/2013)

Judiciary Committee

Joint Favorable

Yea 31 Nay 11 (04/24/2013)

Planning and Development Committee

Joint Favorable

Yea 13 Nay 5 (05/06/2013)